UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/20
7 December 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 7 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING: PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Forced evictions

Analytical report compiled by the Secretary-General pursuant to Commission resolution 1993/77

CONTENTS

	Paragraphs	Pages
Introduction	1 - 9	3
Chapter		
I. DEFINITION	10 - 13	5
II. CLASSIFICATION OF CONCEPTS	14 - 22	6
A. Forced evictions and internally displaced persons	16 - 18	6
B. Forced evictions and population transfers	19 - 22	7
III. CHARACTERISTICS OF FORCED EVICTIONS	23 - 32	8

GE.93-85898 (E)

CONTENTS (continued)

Chapter		Paragraphs	Pages
IV.	CAUSES AND MANIFESTATIONS OF FORCED EVICTIONS	33 - 56	11
	A. Actors	33 - 36	11
	B. Causes	37 - 48	11
	C. Justifications	49 - 56	14
V.	CONSEQUENCES OF FORCED EVICTIONS FOR THE ENJOYMENT OF HUMAN RIGHTS	57 - 72	16
	A. Characteristics of the victims	58 - 61	16
	B. The human impact of forced evictions	62 - 72	17
VI.	LEGAL FOUNDATIONS IN RELATION TO THE PRACTICE OF FORCED EVICTIONS	73 - 99	20
	A. Relevant resolutions and decisions of United Nations bodies	88 - 94	22
	B. World Conference on Human Rights	95 - 96	24
	C. Evictions under the laws of armed conflict	97 - 99	25
VII.	JURISPRUDENCE	100 - 112	27
	A. International jurisprudence	100 - 107	27
	B. Regional case law	108 - 109	28
	C. National case law	110 - 112	28
VIII.	ACTION IN THE PREVENTION OF FORCED EVICTIONS	113 - 123	30
	A. Positive developments	113 - 116	30
	B. Action within the United Nations system	117 - 123	30
IX.	NATIONAL EXPERIENCES	124 - 139	32
X.	CONCLUSIONS	140 - 146	36
XI.	RECOMMENDATIONS	147 - 185	38
	A. Preventive measures	148 - 176	38
	B. Compensatory measures	177 - 185	43

Introduction

1. This report has been prepared in accordance with Commission on Human Rights resolution 1993/77 of 10 March 1993, requesting "the Secretary-General to compile an analytical report on the practice of forced evictions, based on an analysis of international law and jurisprudence", as well as views and comments solicited from Governments, relevant United Nations bodies, including the United Nations Centre for Human Settlements (Habitat), the specialized agencies, regional, intergovernmental and non-governmental organizations and community-based organizations.

2. The Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1991/12 of 26 August 1991 on the issue of forced evictions, and between 1986 and 1988 the Economic and Social Council and the General Assembly also adopted numerous resolutions entitled "The realization of the right to adequate housing" which are of some relevance to the subject. It is, however, resolution 1993/77 of the Commission on Human Rights that constitutes an important step in relation to the practice of forced evictions.

3. The Sub-Commission, in its resolution 1991/12, expressed its deep concern that forced evictions continued to be carried out in many States and in occupied territories, affecting millions of people annually, and that, with the exception of a few special cases, the vast majority of evictions could not be justified under human rights law or humanitarian law. In the same resolution, the Sub-Commission also recognized forced evictions as "a gross violation of human rights, in particular the right to adequate housing". The resolution drew attention to the need for effective measures aimed at eliminating the practice.

4. Also at its forty-third session, the Sub-Commission, in its resolution 1991/26, appointed a Special Rapporteur on the right to adequate housing, whose mandate has a direct bearing on the practice of forced evictions.

5. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991), set further important precedents in relation to forced evictions, which are discussed in detail below.

6. When the Commission on Human Rights, at its forty-ninth session, adopted its ground-breaking resolution 1993/77, it was agreed that new mechanisms needed to be created to deal effectively and comprehensively with the issue of forced evictions, including the greater involvement of the relevant United Nations bodies and specialized agencies. The two resolutions (1991/12 of the Sub-Commission and 1993/77 of the Commission), provide a very strong legal basis for preventive measures against the practice of forced evictions at the international, as well as the national, level.

7. In order to be able to present a complete picture of the problem of forced evictions worldwide, the present study will attempt to define the concept of forced evictions and outline the main causes and manifestations of the practice and its consequences. The relevant international legal instruments, as well as any existing jurisprudence, will also be analysed, in accordance with paragraph 6 of resolution 1993/77. In accordance with

paragraph 5 of resolution 1993/77, the study will present an analytical compilation of the views and comments submitted by Governments, relevant United Nations bodies, the specialized agencies, regional, intergovernmental and non-governmental organizations and community-based organizations.

8. On 7 June 1993, the Secretary-General addressed a note verbale to all Governments and a letter to relevant organizations, requesting information and their views on the subject. These communications elicited replies from the Governments of: Bolivia, Canada, Chad, Chile, Colombia, Italy, Liechtenstein, Niger, Turkey and Ukraine. Replies were also received from the following intergovernmental organizations: Commonwealth Secretariat, Inter-American Court of Human Rights, Inter-American Commission of Human Rights, League of Arab States and Organization for Economic Cooperation and Development. Within the United Nations system, contributions were received from the United Nations Office at Vienna, the Division for the Advancement of Women, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Centre for Human Settlements (Habitat), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The following non-governmental organizations also submitted information: African Association of Education for Development, Centre for Housing Rights and Evictions, Friedrich Ebert-Stiftung, Habitat International Coalition, Minority Rights Group and World Muslim Congress.

9. It is regrettable that only a small number of replies were received, and that of those replies only very few were of a substantive nature. Notwithstanding, since the purpose of the report is to analyse the practice of forced evictions based on an analysis of international law and jurisprudence, the Secretary-General has attempted to use the most reliable information available, drawing on existing United Nations material as much as possible.

I. DEFINITION

10. Most countries today are faced with serious housing problems rendering 100 million persons homeless worldwide and over 1 billion people throughout the world inadequately housed. 1/ Generally speaking, about 15 million people globally have been forcibly evicted from their homes in the past 10 years, 2/ 7 million of them during the 1980s in Asia alone. 3/ In resolution 1993/77, the Commission on Human Rights noted with concern that there were few signs of improvement as the number of people forced to leave their homes every year is growing continuously.

11. In its resolution 1991/12, the Sub-Commission on Prevention of Discrimination and Protection of Minorities identified the practice of forced evictions as involving "the involuntary removal of persons, families and groups from their homes and communities, resulting in the destruction of the lives and identities of people throughout the world, as well as increasing homelessness". For the purpose of the present study, the practice of forced evictions is defined in relation to action concerning individuals, families and groups.

12. It is further useful to point out that, in using the term "evictions", neither of the above-mentioned resolutions refer to mass expulsions, evictions by an occupying army or through armed attacks. However, it is important that both the Sub-Commission and the Commission have recognized and affirmed that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing". In addition, the elimination of the practice of forced evictions is of central importance to the full enjoyment by everyone of economic, social and cultural rights. The practice of forced evictions is further characterized as intensifying social conflict and inequality and it almost invariably affects the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society, while promoting the interests of more powerful groups.

13. According to the Oxford English Dictionary, the words "forced" and "eviction" imply the exertion of strength, power, violence, coercion and military strength over something or someone. The word "force" may also imply the act of "compelling someone to act prematurely, adopt policy unwillingly or compelling someone into a certain course of action". "Eviction" has the same connotation as "expulsion". It becomes apparent that all these synonyms have one thing in common, namely the notion of resistance to varying degrees of violence. The Sub-Commission, in resolution 1991/12, recognized that violence, even if in a disguised form, may often be associated with forced evictions.

II. CLASSIFICATION OF CONCEPTS

14. This section will highlight the distinctions and outline the similarities between forced evictions and concepts related to it such as the right to adequate housing, internal displacement and population transfers. Although there obviously exist a linkage and a causal relationship between these phenomena, it is nevertheless important to bear the distinctions in mind for the purpose of this study, on the basis of which specific action with regard to forced evictions can be identified.

15. As mentioned above, the relationship between the practice of forced evictions and the right to adequate housing is very close as the former constitutes a gross violation of the latter. Furthermore, the Special Rapporteur on the right to adequate housing recognized in his study that the denial of the right to housing may be a consequence of planning and population transfer, especially under foreign occupation, thereby establishing another link between these related issues.

A. Forced evictions and internally displaced persons

16. In its resolution 1991/25 entitled "Internally displaced persons" the Commission on Human Rights stated that "internally displaced persons ... have been forced to flee their homes and seek shelter and safety in other parts of their own country". 4/ In its resolution 1990/78 the Economic and Social Council referred to the "immense human suffering occasioned by the phenomenon of mass population movements resulting from conflict, natural and man-made disasters and war".

17. The specific reference to "mass population movements" suggests, as stated in the analytical report of the Secretary-General on internally displaced persons, that "evictions, relocations or man-made disasters which cause the displacement of a few hundred or thousands of persons, while they may well involve important questions regarding the effective protection of the human rights of those concerned, present different issues from those posed by the involuntary displacement of tens or hundreds of thousands of persons and would need to be studied separately". Consequently, the definition of the term "internally displaced persons" used for the purposes of that report was: "... persons who have been forced to flee their homes suddenly or unexpectedly in large numbers; as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country" (E/CN.4/1992/23, para. 17). 5/

18. It can, therefore, be concluded that the practice of forced evictions may result in the internal displacement of persons and that the two issues cannot be treated separately. This is especially the case since both involve various degrees of "force", "movement", "unexpectedness and suddenness", "violence and violations of human rights" and "insecurity of compensation". However, not every case of forced eviction leads to internal displacement and not all internally displaced persons are displaced due to the practice of forced evictions.

B. Forced evictions and population transfers

19. The work of the Commission regarding forced evictions must be coordinated with the work of the Sub-Commission. In resolution 1990/17, the Sub-Commission decided to include the question of the human rights dimension of population transfers in its future work programme, and in resolution 1992/28 it appointed two Special Rapporteurs to prepare a preliminary study on this question, recognizing that the questions of human rights and mass exoduses, forced evictions and internally displaced persons had a direct bearing on the subject of population transfers.

20. The preliminary report of the Special Rapporteur, submitted to the Sub-Commission at its forty-fourth session, defines population transfer as involving "the movement of people as a consequence of political and/or economic processes in which the State Government or State-authorized agencies participate. The processes have a number of intended or unintended results that affect the human rights of the transferred population, as well as the inhabitants of an area into which settlers are transferred" (E/CN.4/Sub.2/1993/17, para. 14). The report further states that the phenomenon of population transfer is often conducted with the purpose of altering the demographic composition of a territory in accordance with policy objectives or prevailing ideologies, or in order to acquire or control territory, as a result of military conquest or exploitation of an indigenous population or its resources. By implication, it can then be argued that forced evictions based on discrimination, for example, could well be a cause for population transfers. In fact, the report goes on to explain that, in the process of population transfer, people are frequently evicted from their homes or their homes are demolished as part of the relocation effort.

21. The report draws a distinction between the study of the situation of internally displaced persons, which has pursued ways to improve human rights protection not traditionally covered by relief and other agencies in the United Nations system whose mandates relate to cross-border refugees only, and the report on the human rights dimensions of population transfer, which effectively focuses on the international legal issues pertaining to policies and practices that cause displacement. The report further recognizes that "forced eviction may form one of the central mechanisms of population transfer, particularly when applied on a large scale and against a distinct population group" (para. 23).

22. In conclusion, it seems that the element of coercion, involving a movement of persons, is a common factor not only to the issues of forced evictions and population transfers, but also to internally displaced persons. The argument that seems to emerge from attempting to define forced evictions in relation to internally displaced persons and population transfers is that the practice of forced evictions is to be classified as a possible cause contributing towards both of the other phenomena. In addition, as already mentioned above, forced evictions constitute perhaps one of the most serious violations of the right to adequate housing. Such causal relationships and the linkage of all these issues point towards a need to coordinate the work of the Commission and that of the Sub-Commission in these areas, taking particular care to avoid duplication and repetition.

III. CHARACTERISTICS OF FORCED EVICTIONS

23. In order to be able to characterize the practice of forced evictions, it seems necessary to outline the various methods by which forced evictions are carried out and which often contribute significantly to the hardships which inherently result from the act. The use of violence, despite the existence of legally enshrined housing rights and guidelines designed to improve relocation procedures, remains disturbingly common as a means of facilitating evictions. The use of intimidation, threats, physical violence, harassment and other fear tactics are all among the methods used to achieve forced evictions. Consequently, deaths are not uncommon.

24. Demolition crews or task forces, frequently comprised of public officials such as the military or police, are often employed to physically carry out evictions. In some countries official government task forces on demolition exist, whereas in others the formation of squads to undertake the physical removal of occupants and the subsequent destruction of their homes is generally of an ad hoc nature. It has been recognized that practices that deny people their homes and land are "the most devastating ... for they go to the very core and infrastructure of both family and society, and have, therefore, far-reaching and long-lasting effects". 6/ In addition, the use of deliberately set fires as a means of simultaneously destroying homes and forcing people to move is a common method of eviction. Arson clears land without the use of bulldozers and can, in the worst-case scenario, be blamed on the inhabitants themselves.

25. It is, however, the image of a bulldozer flattening the homes of an evicted community that continues to elicit the most recognizable response of those considering the human impact of evictions. The conspicuous nature of "bulldozer justice", although still pervasive, is nevertheless only one of a variety of violent measures taken by those desirous of carrying out an eviction as quickly and "successfully" as possible.

26. The effects of this type of violence on women, children and other vulnerable groups 7/ might be even more far-reaching. In this connection, the Division for the Advancement of Women, in its reply, pointed out the following:

> "Forced evictions often take place in shanty towns located on the outskirts of the urban areas where a great number of women live. Most of these women belong to socially disadvantaged groups, such as single mothers with more than one child under her responsibility. The already deteriorated standard of living becomes tragic when they are subject to forced eviction."

27. In these cases, the practice of forced evictions may well be considered to fall into the category of typical manifestations of violence of which a great number of women are victims. This type of violence is, nevertheless, inadequately covered in legislation and no provisions for compensation exist internationally. However, the Declaration on the Elimination of Violence against Women, currently before the General Assembly at its forty-eighth session, is of relevance with respect to the violence used against women in carrying out forced evictions.

28. The question which must therefore be asked in the light of the above is the following: Even if there exists a seemingly legal, or possibly even laudable case for the execution of planned evictions, is the method applied to achieve the objective justifiable? Do the methods commonly used to carry out seemingly legal acts of forced evictions fall within the rule of law? In other words, Do the means justify the ends? Finally, Are there in fact reasonable grounds for evictions?

29. The question whether there are "reasonable grounds" for evictions requires analysis. Superficially, many of the justifications used in eviction cases may be compatible with the law and thus seem reasonable, such as for reasons of public order, the safety and security of the inhabitants, threats to public health, etc. The problem, however, is that in most cases of eviction the affected persons, in addition to having their human rights violated, tend to end up in a far worse situation, despite the fact that their living and housing condition before the eviction may have been far from ideal. Moreover, from the perspective of human rights law, prior to examining the logic of the eviction rationale one is forced to reassess how "reasonable" most of these justifications are in practical and human terms.

30. There exist, of course, circumstances in which evictions may not only be justifiable but constitute the only way of solving the problem. Persistent anti-social behaviour, such as harassing or intimidating neighbours or behaviour threatening public health and safety, could, for example, be considered "reasonable grounds" for evictions. Similarly, racist statements, attacks and criminal behaviour against neighbours, the recurring non-payment of rent in a habitable environment and in the situation of a corresponding ability to pay, as well as the unjustifiable destruction of rented property, may all be considered situations in which a forced eviction is justified. Furthermore, in the case of the occupation of land or homes by nationals of an occupying country, "the illegal, null and void character of the establishment of settlements in occupied territories", as stated by the Sub-Commission in resolution 1991/12, is recognized to be sufficient grounds for forcibly evicting the occupiers.

31. There exist situations in which dwellers should have the right to relocation and rehabilitation, namely when their safety or health is threatened. The context in this case differs from forced evictions in so far as the goal of the eviction is precisely the protection of the rights of the people to be moved and includes the guarantee of compensation, alternative land or housing, and the right to return to the evacuated area when the situation returns to normal. Such conditions might exist as a result of flooding, earthquakes, volcanic eruptions, armed conflict, environmental disasters, drought, famine and other emergencies. These situations often involve a request by dwellers to relocate, indicating their full participation in and agreement with the process.

32. For example, the Government of Chile informed the Secretary-General in its reply that the displacements which Chile has experienced do not fall within the terms of reference of resolution 1993/77 since they involve natural

catastrophes, such as earthquakes, floods, etc. In relation to these events, the Government has coordinated action with relevant State agencies in order to provide emergency housing and goods. If an area is considered dangerous, the Government acquires land in the same or neighbouring communes to build houses for those who have to be evicted for safety reasons, in order to avoid a traumatic uprooting of the people concerned. In addition, "the Government of Chile assumes the legal responsibility of impeding forced evictions, without prejudice to reiterating that this is only the case in situations of force majeure".

IV. CAUSES AND MANIFESTATIONS OF FORCED EVICTION

A. Actors

33. In resolution 1991/12 the Sub-Commission recognized that the practice of "forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including, but not limited to, occupation authorities, national Governments, local governments, developers, planners, landlords, property speculators and bilateral and international financial institutions and aid agencies". The Commission, however, emphasized in resolution 1993/77, that "the ultimate legal responsibility for preventing forced evictions rests with Governments" and, therefore, evictions perpetrated by the private sector would fall within the mandate of human rights law.

34. To elaborate on the above, the general view today is that human rights treaties entail legal obligations requiring States parties to provide appropriate domestic legislation and, in some cases, administrative regulation, protection from infringements by anyone of the rights and freedoms guaranteed by the instrument, as well as effective remedies if they are infringed. 8/ Therefore, in countries which have ratified treaties containing housing rights or rights related to evictions, all actors sanctioning, tolerating or actually carrying out forced evictions are legally accountable. The State's "ultimate legal responsibility", in this context, implies that there exists an obligation by the State to ensure that social players do not violate the rights of others.

35. Legislation in many countries prohibits "illegal" or arbitrary evictions by private entities, such as landlords against renters, whilst in others strict restrictions are placed on the legally acceptable grounds for eviction. The law also commonly requires the decision of a court prior to enforcing an eviction order. Although essentially designed to protect persons against enforced homelessness and the trauma of eviction, these laws are routinely violated. Moreover, property developers and the construction industry, among others, frequently argue that the existence of such provisions discourages the building of new housing and impedes the subsequent growth of the national housing stock.

36. Although the practice of forced evictions can be carried out by a range of actors and for a multitude of reasons, in all but a few cases, these evictions cannot be justified under human rights law or humanitarian law. The next section addresses the causes behind the justifications of the practice of forced evictions, as discussed in the previous chapter.

B. Causes

37. The role of basic policy-making and planning in evictions is recognized without reservation in Sub-Commission resolution 1991/12 as follows: "misguided development policies can result in mass forced evictions" and "Governments often seek to disguise the violence that may be associated with forced evictions by using terms such as 'cleaning the urban environment', 'urban renewal', 'overcrowding' and 'progress and development'".

38. "Structural adjustment policies", advocated by international financial institutions such as the International Monetary Fund and the World Bank and bilateral aid agencies and carried out by States, also contribute to an increasing number of people being displaced due to forced evictions. 9/ They may result, inter alia, in the erosion of basic social services. The argument that is sometimes put forward in this connection is that the nature of the global economy and international relations is such that evictions constitute an unfortunate but necessary aspect of the price of progress and development. 10/

39. The Committee on Economic, Social and Cultural Rights at its fourth session, in its General Comment No. 2 (1990) on international technical assistance measures, states, inter alia, that:

> "... international agencies should scrupulously avoid involvement in projects which ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation ... . (E/1990/23, annex III, para. 6).
>
> "...
>
> Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are taken duly into account". (para. 8 (d)).

40. Yet, when a Government willingly accepts development assistance or loans from international and monetary agencies, resulting in forced evictions as a "by-product of development", liability does not shift entirely to the provider of finance.

41. It can already be concluded that one of the most important root causes of forced evictions is the absence of any degree of accountability on the part of those who plan evictions and carry them out towards those who are subject to these actions. To create such a relationship, popular participation in planning, and dialogue and consultation between the concerned communities, public agencies, local authorities and international actors are essential. In Colombia, for example, Act 9A of 1989 regulating social housing and urban development policies encourages community participation in the implementation of programmes and projects inasmuch as it authorizes the creation of non-profit-making peoples' housing organizations to draw up housing programmes based on self-management or participatory techniques for their members.

42. In addition, inadequate planning without any provisions for the victims of forced evictions leads to a drastic deterioration of the living conditions of the persons concerned. The practice is frequently pursued by Governments in the name of "progress and development", an inevitable by-product of the advancement of society, with no regard to the adverse consequences and suffering of millions of people yearly. According to the Asian Coalition for Housing Rights, in Seoul, for example, the interests of construction companies, were found to have played a significant role in evictions and relocations, which freed the way for redevelopment of the cleared site. 11/

43. To underline this argument, the Committee on Economic, Social and Cultural Rights, in General Comment No. 4 (1991) states clearly that "a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant" (E/1992/23, annex III, para. 11).

44. On the other hand, it must be pointed out that attempts to address the problems associated with forced evictions and resulting relocation have been made by relevant international agencies. These include several operational directives and guidelines issued by the World Bank and the Organisation for Economic Cooperation and Development, which will be discussed below.

45. The Special Rapporteur on the right to adequate housing, in his report, has also identified a host of root causes in different societies resulting in housing crises (E/CN.4/Sub.2/1992/15, paras. 21-57). Such causes included the failure of government policies, discrimination in the housing sphere, structural adjustment programmes and debt, poverty and forced evictions. He also pointed out in his report that countries illegally occupying territories commonly use housing policies as a tool for favouring their own citizens at the expense of the rights of the original inhabitants, in particular through the use of planning laws and the practice of population transfer.

46. The Sub-Commission also showed deep concern at the fact that discrimination based on race, ethnic origin, nationality, gender, and social, economic and other status is often the actual motive behind forced evictions.

47. Planning policies, in situations where the public administration is inherently discriminatory, are often anti-democratic and fail to satisfy the needs of the target community. According to the National Land Committee, a nationwide umbrella organization of land rights groups working in South Africa, over 5 million blacks were forcibly evicted from their homes and land during the era of apartheid rule. Resolution 13/8, adopted by the United Nations Commission on Human Settlements on 8 May 1991, in addition to condemning the Pretoria regime for its policy of forced mass removal of the African population from their homes, also:

> "Calls upon the international community to support the national liberation movements in their rejection of proposals to promulgate new legislation on land without the involvement and in complete disregard of the needs of the homeless Black community in South Africa, and further urges the Government and Parliament of South Africa to consult the African community with the objective of developing fair and equitable land policies and legislation."

48. In a very detailed analytical study commissioned by the United Nations Centre for Human Settlements (Habitat), an "evaluation of relocation experience" of the inner-city urban poor is carried out. 12/ This study highlights the lack of residential stability, induced by market forces on one hand and the public-sector activities to rehabilitate these areas on the other, causing increases in rent and replacement of current tenants with higher income groups. This trend also provides incentives to landlords to convert their properties to uses more profitable than housing. It is also

pointed out that "the efforts to provide on-site residential stability for the inner-city poor have often failed, and it is a fact that a majority of redevelopment activities have caused the relocation of low-income residents". 13/

C. Justifications

49. Due to the severe and multi-dimensional effects of eviction, virtually no evictions are carried out without some form of public justification to legitimize the action. However, it must be borne in mind that there often exist discrepancies between the public rationale for the evictions and the actual motivation backing the decision to evict.

50. The Centre on Housing Rights and Evictions (COHRE), a Netherlands NGO, has gathered, among others, the following types of justification for forced evictions, based on global analyses of the practice: to build new and improved housing; to protect public health, hygiene and safety; to protect the safety of pedestrians on pavements; to provide infrastructure, roads or public works; to protect historical buildings or landmarks; to construct government buildings; to increase arable land for agriculture; as a punishment for political activities; to prevent the growth of a city; to remove "the cancerous rot of the city"; to eradicate safe havens for criminals; to carry out redevelopment projects; to demolish premises for reasons of safety and health; to deter future squatting; to rent the premises to future tenants; to free space for family members of the owner; to protect dwellers from threat of flooding; to dredge filtrated canals; to build sporting stadiums or arenas; to reclaim public land and to separate ethnic or racial groups. 14/

51. The improvement of housing conditions of the inhabitants seems, at first sight, a very commendable justification for evictions. However, as one NGO pointed out, there exist cases involving situations of prolonged occupation in which entire neighbourhoods, inhabited by members of the occupied populations, have been razed, ostensibly to make way for better, modern housing but which has only resulted in a drastic increase of the rent leading to untenable situations for the former inhabitants. The same source argues that in such cases, the relocation exercise is in fact a pretext for breaking up social units and to deny housing to "politically undesirable families", while introducing "politically correct" elements into a previously congenial and cohesive social group. Another consequence of the practice of forced eviction in this particular case was a dramatic increase in the number of beggars in the area concerned.

52. Forced evictions may also be carried out in order to clear or "provide good scenery for foreigners", as in the case of Tashinga Camp in Mbare, Harare. Prior to the visit of Queen Elizabeth II and the meeting of the Commonwealth heads of State in 1991, mass evictions were carried out affecting over 3,000 people. Squatters from the outskirts of Harare were relocated only a week later some 40 kilometres from their original location, making it practically impossible to commute to and from the city. 15/ The Harare City Council, with assistance from the Ministry of Local Government, Rural and Urban Development, justified these evictions on the grounds that such poverty would cause "severe embarrassment to the Queen" and that the presence of squatters in Harare would be "contrary to the interests of Zimbabwe". 16/

53. Another reason cited to justify forced evictions is the need to construct facilities for international events. An example of this was the 1988 Olympic Games in Seoul. The land needed for sports stadiums, accommodation and the enhancement of the image of the host country led to an extensive demolition and redevelopment programme. 17/ Plans surrounding the 1996 Olympic Games in Atlanta are similarly threatening the forced relocation of several communities, including Techwood, Clark Howell and Summerhill, rendering thousands of residents homeless. 18/

54. Eviction plans exist for rural areas in Thailand, to conserve ecologically important locations, particularly as a result of the Thai Forestry Recovery Programme which threatens the possible eviction of some 12,073 villages in land areas recently classified as "preserved forests". Most villages do not possess legal land rights and can face eviction by the Government on virtually any ground. The inhabitants of one village, however, refused to be moved from their houses, arguing that it was possible for people to live alongside trees in a community forestry programme. Since then the Government has announced that the evicted villagers could return to their homes, but local authorities are still refusing to go along with this decision. 19/

55. The United Nations Division for Palestinian Rights and the United Nations Conference on Trade and Development in their contributions drew attention to the practice of house demolition and sealing carried out by Israel in the occupied Palestinian territories, resulting in the forced eviction and subsequent homelessness of the occupants. The procedure of destroying a suspect's home as a method of "punishment" is often carried out without a trial and without any requirement to prove the defendant's guilt before a judicial body. 20/ At the same time, the victims are often prohibited from rebuilding the house or from breaking sealed entrances, since the sealing and demolition order is also a land expropriation order. According to information transmitted by the Division for Palestinian Rights, the affected persons usually receive a tent from UNRWA or the Red Cross, which they erect on the ruins of the demolished house (despite the fact that the land has been confiscated). 21/

56. A NGO in consultative status with the Economic and Social Council cited as causes for the practice of forced evictions, in particular in sub-Saharan Africa, the building of industrial zones (such as mine extractions and hydroelectric dams), nature reservoirs and harbours, etc. Furthermore, in order to guarantee the security of a head of State or Government, families are often forced out of homes which are in the vicinity of his/her house or itinerary. The Secretary-General has also been informed that legally constructed housing is sometimes demolished if it is situated too close to the border with a neighbouring country.

V. CONSEQUENCES OF FORCED EVICTIONS FOR THE ENJOYMENT OF HUMAN RIGHTS

57. As mentioned above, the practice of forced evictions is recognized to constitute a gross violation of human rights, in particular of the right to adequate housing. However, much more far-reaching consequences with wider implications for the enjoyment of human rights of the concerned people are evident following evictions. This section will, therefore, relate the consequences suffered through the practice of forced evictions in the context of violations of other human rights.

A. Characteristics of the victims

58. The Commission and the Sub-Commission both pointed to the fact that "forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society".

59. In the developed countries of the North as well as in the developing countries of the South, the similarities of those affected by evictions are striking. They tend to be non-owners, from poor or low-income groups, without recognized land rights or security of tenure, often "illegal" in the eyes of the law, politically and economically weak, under-represented in the decision-making process or members of certain racial/ethnic groups. Whether pavement dwellers in Bombay, squatters in Bangkok, inhabitants of the barrios in Santo Domingo, low-income tenants in Seoul, landless peasants or indigenous peoples everywhere, the victims of the global phenomenon of forced evictions are invariably those with the least rights and the fewest social and economic opportunities, in both rural and urban societies.

60. It is not difficult to explain why it is the impoverished persons, families and communities that are most affected by the many consequences of eviction. The technically "illegal" nature of many settlements, dwellings, squats and pirate settlements, as well as the non-conformity of structures with official building codes, which affect mainly the poorest groups and provide the proponents of eviction with legally based arguments to carry out their plans. In fact, 40 to 70 per cent of all the new housing of the poorest sectors of society is built by the people themselves, resulting in mostly "illegal" construction. 22/ The fact that many aspects of poor peoples' lives are officially "illegal", not least due to social and economic conditions restricting access to legal housing resources, provides some explanation of why it is this sector of society which has to bear the brunt of evictions.

61. Although some evictions may be unavoidable and, under law, acceptable and reasonable, the human cost of forced evictions can be so harsh and demeaning that any justification for evictions must be evaluated in these terms and in accordance with generally recognized principles of international law.

B. The human impact of forced evictions

62. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991), pointed out that violations of the right to adequate housing are numerous, especially as the right itself "should not be interpreted in a narrow or restricted sense which equates it with, for example, the shelter provided by merely a roof over one's head ... . Rather it should be seen as a right to live somewhere in security, peace and dignity" (para. 7).

63. In the light of the above, the practice of forced evictions severely impairs enjoyment of the rights to shelter and adequate living conditions by the affected population, in addition to violating their rights to liberty and security of persons. Nevertheless, hardly any attention is ever paid to the social costs of forced evictions and displacement, such as the loss of a secure, neighbourly environment and social network critical for survival, often leading to physical, psychological and emotional trauma, and relocations to desolate areas far from employment opportunities (leading to economic hardship), schools and familiar services. Forced evictions in the name of city improvements often break up communities, if not families, despite the fact that communal support is often the most important security for people.

64. Other costs for evicted people are increasing individual and social impoverishment; medical hardship and the spread of disease; substantially higher transportation costs; worse housing conditions, including the lack of basic amenities; physical injury or death due to the use of arbitrary violence; arrest and imprisonment of opponents of eviction; reduction of the low-income housing stock leading to substantially higher housing costs, often in the absence of alternative accommodation; racial segregation and/or increased social isolation; loss of culturally or traditionally significant sites; the confiscation of personal goods and property; a feeling of powerlessness; coupled with existing dwellers at resettlement sites. 23/

65. By implication, the practice of forced evictions severely infringes upon the inherent dignity of everyone, as the affected community becomes subjected to threats and violence, as well as possible discrimination on ethnic or racial grounds. The right to just and favourable conditions of work, is impaired due to the distance of relocation sites from employment opportunities. Similarly, the right to education might be impaired if there is no school near the resettlement area or if the nearby schools are unable to absorb large numbers of new arrivals. The freedom of movement and the right of everyone to choose their own residence are also, obviously, violated by forced removal of people from their houses and homes.

66. The right to the highest attainable standard of physical and mental health, and to health care is violated due to often overcrowded relocation sites, which in turn increase health risks due to the spread of diseases and the lack of public health care facilities and medicaments. The inherent right to life of everyone is also threatened in these situations. For example, at a resettlement site in Dakshinpur at New Delhi, six months after the arrival of the evicted persons basic facilities were still lacking. As a result, malaria

and stomach infection were rampant and although the number of people who died of disease in the first few months has not been fully documented, the number must have run into the hundreds. 24/

67. Furthermore, the right to family life and unity is threatened as families might be forced to split up in the process of an eviction, although the family is recognized as the natural and fundamental unit of society. The practice of forced evictions also violates the right of everyone to be free from arbitrary interference with one's privacy, family or home, as well as the right to enjoy the cultural life of the community. For example, in one eviction case in Dhaka, a squatter community was not moved as a unit, thereby breaking the ties between the people and leaving no sense of community. It turned out that for these people location and the preservation of family unity was a much more important issue than the quality of their shelter. 25/

68. It should not be forgotten that legal residency, by definition, is the basic requirement for electoral registration. Consequently, the illegal status of many persons affected by forced evictions may result in the loss of the right to vote and participate in government, as well as in the loss of other rights of a citizen, such as the right to freedom of thought, expression and assembly; this in turn may lead to a loss of faith in the legal and political system of the country and may perpetuate the "criminalization" of those sectors of society which are most frequently subject to the practice of forced evictions.

69. The loss of livelihood and traditional lands and a deteriorating environment are also possible consequences of mass evictions. These in turn are obstacles to the enjoyment of the right of everyone to freely pursue their economic, social and cultural development. For example, not only do dams frequently inundate the best land in the area affected, they can also make the surrounding region uninhabitable. Dam builders generally claim that large dams are more economical than small ones. However, the larger the dam, the farther any people must move. 26/ Jungle dam builders often do not even cut the trees down first, but simply flood the forest. After a while, the rotting vegetation gives off harmful gases, killing the fish and making the water undrinkable, as well as multiplying the occurrence of various diseases.

70. It should not be forgotten that attempts are being made at different levels to guide the eviction process so as to mitigate inordinate harm and suffering. The impetus for adopting some kind of guidelines clearly comes from a recognition of the human impact, apparent in various forms as listed above, of the process. These adverse human consequences form the basis, for instance, for the newly approved "Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects", adopted by the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) in 1991, which were submitted to the Secretary-General in response to his request for information. The guidelines state that:

> "Development projects that displace people involuntarily generally give rise to severe, economic, social and environmental problems: production systems are dismantled, productive assets and income sources are lost, and peoples are relocated to environments where their social and

productive skills may be less applicable and the competition for resources greater. Involuntary resettlement thus may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. Past experience indicates that the absence of explicit guidelines regarding involuntary resettlement has contributed in many projects to underestimating the complexity and impact of displacement". 27/

71. The guidelines further point out that although adequate resettlement planning may increase the initial investment costs of a project, long-term benefits include fewer delays and cost escalations during project implementation, an increased profit stream from economically productive resettlers, and reduced welfare costs to society at large. Therefore, resettlement planning not only provides the means to mitigate the adverse impacts of displacement, but also creates development opportunities for project-affected people with a long-term economic benefit for them.

72. Similarly, a non-governmental organization pointed out that, although the Commission, in resolution 1993/77, recommended that all Governments should provide immediate restitution and/or appropriate compensation to the forcibly evicted, one crucial condition is missing, namely that, in the case of massive forced evictions, it is indispensable for measures of restitution and/or compensation to be taken in advance of the evictions.

VI. LEGAL FOUNDATIONS IN RELATION TO THE PRACTICE OF FORCED EVICTIONS

73. The practice of forced evictions has generally been recognized as perhaps the most serious violation of the right to adequate housing. Sub-Commission resolution 1991/12 clearly states that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to housing". Commission resolution 1993/77, therefore, requires that the present report be based on an analysis of international law and jurisprudence.

74. Although there currently exists no single code specifically outlawing forced evictions or regulating their outcomes, most cases of forced eviction constitute a violation of the basic principles of conventional and customary international human rights law. Consequently, in addition to drawing attention to the specific provisions relating to forced evictions, it seems pertinent also to recall the legal foundations of the right to adequate housing.

75. In accordance with article 12 of the Universal Declaration of Human Rights, "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ...". By implication, therefore, the practice of forced evictions violates everyone's right to be free of arbitrary interference with his privacy, family and home and is entitled to the protection of the law against such interference or attacks.

76. More importantly, forced evictions constitute a clear violation of the right to adequate housing, the legal foundations of which are essentially laid out in article 25 (1) of the Universal Declaration as follows:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

77. The International Covenant on Economic, Social and Cultural Rights, in article 11 (1), recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent." This article forms the basis of the work of the Committee on Economic, Social and Cultural Rights on the right to adequate housing.

78. Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, states: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to housing".

79. Article 21 of the International Convention relating to the Status of Refugees and article 43 (1) (d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also contain provisions on the right to adequate housing, and by implication against the practice of forced evictions.

80. A number of international declarations, in addition to the Universal Declaration of Human Rights, also address the right to adequate housing, such as article 4 of the Declaration of the Rights of the Child (1959), Principle 2 of International Labour Organisation Recommendation No. 115 (1961), article 10 (f) of part II of the Declaration on Social Progress and Development (1969), and article 8 (1) of the Declaration on the Right to Development (1986).

81. The Vancouver Declaration on Human Settlements, adopted by the United Nations Conference on Human Settlements in 1976, addresses the issue of forced evictions directly and defines acceptable behaviour relating to evictions, as follows:

> "The undertaking of major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made ...
>
> The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land, or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles [on human settlements] and the Universal Declaration of Human Rights."

82. This explicit international recognition of both the non-desirability of clearance operations and the significant relationship between human settlements policies and the human rights found in the Universal Declaration provides a solid legal basis in relation to which Governments should consider the practice of forced evictions.

83. In 1957 the International Labour Organisation adopted the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107), which stipulates in article 12 that the rights of ownership over land of indigenous populations should be recognized, and that they should not be moved without their free consent. The Convention is, however, significantly watered-down by stating that removals in accordance with national laws, in the interest of national economic development, are permitted, as a provision which liberally interpreted, can serve as a justification for virtually any kind of practice of forced evictions. In an attempt to remedy this provision, the Convention stipulates that in such cases of removal, the populations concerned shall be provided with lands of equal quality or with compensation in money or kind if preferred.

84. In 1989, the ILO adopted the Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) to strengthen the provisions of the 1957 Convention by stating in article 16 that:

> "Where the relocation of [indigenous peoples] is considered necessary as an exceptional measure, such relocation shall take place only ... following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned".

85. In addition, provisions to protect indigenous peoples from forced evictions and resettlements, are found in at least three South American Constitutions: 28/

(a) The 1988 Brazilian Constitution recognizes original rights of indigenous peoples over traditional lands and guarantees permanent possession and use of these lands, their surface resources and waters. Even temporary removals must be approved by Congress;

(b) The 1992 Paraguayan Constitution stresses that indigenous peoples should be provided with inalienable lands and prohibits their removal without their express consent;

(c) In the Colombian Constitution of 1991, political and resource-management authority is devolved to indigenous communities and substantial areas of land are demarcated for such jurisdiction.

86. The draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1993/29, annex I) clearly states in article 10 that:

> "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

This provision is supported by article 7, which makes any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources subject to redress.

87. For a discussion on the issue of indigenous peoples' land rights and their eviction or forced transfer from their traditional territories, see the report of the Special Rapporteurs on the human rights dimension of population (E/CN.4/Sub.2/1993/17 and Corr.1).

A. Relevant resolutions and decisions of United Nations bodies

88. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its forty-fifth session, adopted resolution 1993/41 on forced evictions, thereby reinforcing the provisions contained in Commission on Human Rights resolution 1993/77.

89. In addition, the Global Strategy for Shelter to the Year 2000 (A/43/8/Add.1) states in its first basic principle that "[the] right to adequate shelter is recognized universally and constitutes the basis for national obligations to meet shelter needs". This is further elaborated as follows:

"[all] citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them" (A/43/8/Add.1, para. 13).

90. The United Nations Commission on Human Settlements has adopted several resolutions addressing the right to adequate housing and the practice of forced evictions, including resolutions 11/9 entitled "The situation between Iraq and the Islamic Republic of Iran", 11/11 entitled "Assistance to victims of apartheid and colonialism in southern Africa" and 11/12 entitled "Financing of shelter", all of 1988.1) Resolution 11/9 reflects the concern of the Commission "that the continuation of fighting will lead to further destruction and misery for innocent civilians and lead to their immigration and the abandonment of their habitat, thus leaving them without shelter." Similar criticism was directed towards the Government of South Africa in resolution 11/11, wherein the Commission "strongly condemns the Pretoria apartheid regime for its continuous forced removal of the African population from their homes".

91. At its twelfth session, the Commission adopted resolution 12/3, which reaffirmed its condemnations of the continuing forced removal of the African population from their homes, and called upon "the international community to provide material assistance to the displaced and homeless victims of the region". It also adopted resolution 12/4, which "calls for an end to the continuous destruction of human settlements in Lebanon".

92. The United Nations Centre for Human Settlements (Habitat) has in its contribution drawn the attention of the Secretary-General to resolution 14/6, entitled "The human right to adequate housing", adopted by the Commission on Human Settlements on 5 May 1993. In this resolution, the Commission "urges all States to cease any practices which could or do result in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere." The resolution also invites "all States to repeal, reform or amend any existing legislation, policies, programmes, or projects which in any manner negatively affect the realization of the right to adequate housing".

93. In summary, the practice of the Commission on Human Settlements has established that:

(a) Warfare leads to homelessness through destruction or eviction;

(b) Housing rights can be "denied";

(c) Forced removals should be internationally condemned;

(d) Housing rights need consistent reaffirmation;

(e) The right to rebuild homes destroyed during operations sanctioned by the State exists;

(f) The right to adequate housing is infringed by the practice of forced mass eviction.

94. The contents of these resolutions, therefore, should clearly provide an impetus for further action on the issue of forced evictions at forthcoming sessions of the Commission on Human Settlements. Furthermore, these resolutions must not be viewed in isolation but within the overall context of the mandates and programmes of the United Nations Centre for Human Settlements.

B. World Conference on Human Rights

95. Within the framework of the World Conference on Human Rights, which took place at Vienna in June 1993, a forum for non-governmental organizations was held. The final report of the forum (A/CONF.157/7 and Add.1 and 2), presented to the plenary of the World Conference, contains a series of recommendations made by various thematic working groups that were held during the forum.

96. Working Group 3 was dedicated to "Forced evictions, displacement and housing rights". Its report included, inter alia, the following recommendations:

(a) It was recommended that all Governments should halt immediately any and all violations of the right to adequate housing, in particular the practice of forced evictions, demolitions and sealing of housing, discrimination in any form in the housing sphere, processes that lead to homelessness, destitution and the tolerance and perpetuation of inadequate living conditions;

(b) The Working Group recognized and expressed its deepest concern that forced evictions - the removal, relocation and resettlement of individuals, families, groups and communities against their will - is a widespread and global phenomenon, affecting millions of persons annually in all countries and in every region of the world in both urban and rural areas;

(c) It was recommended unequivocally that all States should halt immediately all manifestations of the practice of forced evictions and that all Governments should refrain from adopting legislation which effectively legitimizes forced evictions;

(d) The Working Group reaffirmed the position of several United Nations human rights bodies, including the Commission on Human Rights and the Committee on Economic, Social and Cultural Rights, that forced evictions are a gross violation of human rights, in particular the right to adequate housing;

(e) It was recommended that immediate compensation and restitution be provided to any and all victims of the practice of forced evictions;

(f) The Working Group was deeply alarmed that the non-fulfilment and continued denial of housing rights, including the practice of forced evictions, created situations that gave rise to outbursts of communal and ethnic violence and led to discrimination in the housing sphere of specific ethnic groups;

(g) The Working Group expressed its dismay that acts of communal and ethnic violence throughout the world can and do result in massive violations of housing rights, including the acts of forced evictions and displacement;

(h) The Working Group expressed its alarm at the explicit use by States, including occupying Powers, of the utilization of the planning process as a means of discriminating, through policy and programmes, including master plans, against certain groups, often leading to being forced to leave their homes through the process of displacement and forced evictions;

(i) It was recommended that international and bilateral financial agencies should halt funding of all development projects, including the imposition of conditionality ridden economic adjustment policies, that lead to the involuntary removal of people from their homes;

(j) The Working Group, taking into account the aforementioned points, recommended in the strongest possible terms the appointment by the Commission on Human Rights of a Special Rapporteur on forced evictions as a matter of urgency and with a view towards documenting, exposing, and especially, preventing the gross violations of human rights arising from the practice of forced evictions.

C. Evictions under the laws of armed conflict

97. In situations of war or armed conflict, thousands and even millions of persons are forcibly evicted from their homes or sometimes forced to flee for fear of their own safety. International humanitarian law expressly prohibits such evictions unless the security of the inhabitants can only be guaranteed through their temporary displacement. Several important clauses applicable during wartime, armed conflict or illegal occupation can be found in the following treaties, considered part of customary international law and thus binding on all nations of the international community.

98. The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 addresses these issues in detail. Article 49 of the Convention provides that:

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive ... ."

Article 53 of the same Convention prohibits "... destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons ... except where such destruction is rendered absolutely necessary by military operations."

99. Article 17 of the second Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed conflicts states:

> "1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
>
> "2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."

VII. JURISPRUDENCE

A. International jurisprudence

100. The emerging jurisprudence of the Committee on Economic, Social and Cultural Rights reveals a legally consistent approach concerning the practice of forced evictions and towards Governments which sponsor or tolerate evictions, thereby placing this act firmly into the category of unacceptable actions.

101. The Committee has requested each of the countries which have ratified the International Covenant on Economic, Social and Cultural Rights to provide it with specific information about the prevalence of evictions within their territories. The guidelines which outline the form and content of States parties' reports were fully revised in 1990, so that each State party is required to submit to the Committee, every five years, answers to a variety of questions concerning the practice in the country.

102. The information which should be furnished to the Committee includes the following:

(a) The number of persons evicted during the previous five years and the number of persons currently lacking legal protection against eviction;

(b) Legislative measures taken to prohibit all forms of evictions;

(c) Measures taken preceding international events geared towards protecting the rights of dwellers and towards preventing evictions; and

(d) Legislative measures designed to confer security of tenure to those currently lacking such protection.

103. At present, questions are posed to all representatives of States parties appearing before the Committee on whether and to what degree forced evictions are carried out in the State. These and other additions to the reporting guidelines represent significant advances and provide a greater degree of clarity and normative content to the rights and duties found in the International Covenant on Economic, Social and Cultural Rights.

104. During 1990 and 1991, the Committee on Economic, Social and Cultural Rights took unprecedented action by declaring the Dominican Republic (twice) and Panama to be in violation of Article 11 (1) of the Covenant due to the extent and manner of evictions carried out in those countries. 29/ These decisions embody the first official condemnations of specific countries by a United Nations treaty-based body due to the practice and tolerance of forced evictions.

105. The Committee has thus far adopted four general comments which seek to provide additional guidance to States towards the fulfilment of their obligations under the Covenant. Two of these, namely General Comment No. 2 (1990) and General Comment No. 4 (1991) refer specifically to forced evictions.

106. In General Comment No. 4 on the right to adequate housing (E/1992/23-E/C.12/1991/4, annex III), the Committee put forth one of the most comprehensive legal views on evictions yet to emerge from an international legal body. Paragraph 18 comprehensively declares:

...

> "the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."

107. General Comment No. 4 further notes that issues arising from evictions are liable to judicial consideration by national and local courts of law, and should be treated as such. The right under the norms of the Covenant that everyone "should possess a degree of security of tenure which guarantees legal protection against forced eviction" is also contained in the same document.

B. Regional case law

108. Although neither the right to housing nor the explicit protection from evictions is contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), several cases considered by the European Commission and Court of Human Rights have dealt directly with forced evictions. Most prominently, the inter-State complaint case of Cyprus v. Turkey in 1976 recognized evictions as a violation of the right to "respect for the home". The opinion of the European Commission in this case held that:

> "The Commission considers that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under Article 8 (1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life ... The Commission concludes ... that ... Turkey has committed acts not in conformity with the right to respect for the home guaranteed in Article 8 of the Convention." 30/

109. With reference to the above and within the strict context of the right to respect for the home and the right to private life, evictions constitute violations of this legal norm. According to the Commission, the right to respect for the home was interfered with by preventing the possibility of return to one's home after being evicted.

C. National case law

110. One NGO supplied an example of national case law on the issue of housing and forced evictions. According to this source, in India, the Supreme Court and other judicial bodies have made several far-reaching decisions concerning evictions which have sought to protect dwellers, of which the "Bombay Pavement Dwellers Case" is the most well known. In 1981, the Supreme Court of India decided that the right to life includes the right to live with human dignity,

including the bare necessities of life such as adequate nutrition, clothing and shelter. Despite this and other pronouncements in this case, however, the pavement dwellers were eventually ordered to vacate their homes.

111. In 1986, the same Court decided that even if a person is in unauthorized possession of land or has built on it without authority, he cannot be evicted without authority of law.

112. In a recent case in Zimbabwe, the Catholic Commission for Peace and Justice filed an urgent application for a High Court injunction preventing the Government from evicting the residents of Churu Farm on the grounds that, under the 1992 Land Acquisitions Act, an eviction could only be effected by order of a competent court and must be subject to three months' notice. Subsequently, the High Court issued a temporary injunction against the Minister of Lands, Agriculture and Water Development, the Home Affairs Minister and the Senior Minister of Local Government until a proper eviction order was issued by a competent court. 31/

VIII. ACTION IN THE PREVENTION OF FORCED EVICTIONS

A. Positive Developments

113. Following a decision of the Committee on Economic, Social and Cultural Rights in 1991 urging the Dominican Republic not to carry out any action not in conformity with the International Covenant on Economic, Social and Cultural Rights, a decree dated 17 September 1991 ordering the "immediate eviction" of the communities of La Cienega and Los Guandules has not been implemented. Local groups assert that the decision by the Committee was a decisive element in the Government's reconsideration of the planned eviction. As of May 1993, 70,000 persons were living in La Cienega and Los Guandules. 32/

114. In September 1992, in Zambia, following initiatives by local housing groups, which utilized Sub-Commission resolution 1991/12 among other legal instruments, the Minister for Local Government and Housing postponed several planned evictions of approximately 17,000 persons from Lusaka's slum areas of Misisi, John Lenge and Chawawa. 33/

115. In Manila, well-organized opposition to two planned evictions have led to the substantial alteration of these plans. For example, following a vigorous protest by dwellers in North Cemetery, home to 1,000 families, the local authorities provided adequate relocation sites acceptable to the evicted community. 34/

116. The above cases clearly demonstrate that the successful prevention and avoidance of forced evictions are possible and that the existing United Nations resolutions and decisions are useful instruments for effective action.

B. Action within the United Nations system

117. In resolution 11/10 of 1988 concerning the reconstruction of Palestinian homes, the Commission on Human Settlements, called upon the Israeli occupying authorities to cease their malpractices against Palestinians in the occupied territories, particularly the blowing up and destruction of Palestinians' houses, which conflict with the aims and principles of the Commission on Human Settlements and its endeavours to fulfil the goals of the International Year of Shelter for the Homeless, and reiterated "the right of the Palestinian people whose houses have been blown up and destroyed by the Israeli occupation to rebuild their houses and to reside in them again".

118. In addition, in resolution 12/11 of 1989 on the Israeli-occupied territories, the Commission reaffirmed the right of the Palestinian people to secure adequate shelter in which to live in peace and dignity, as well as their right to rebuild their homes and reside in them peacefully, and called upon the Israeli authorities to make open the houses sealed by military order in the occupied territories. In the same resolution, the Secretary-General was requested to establish an international fund for the purpose of rebuilding homes and other structures which were demolished by Israeli occupation authorities rendering numerous Palestinian families homeless.

119. The Commissioner-General of the United nations Relief and Works Agency for Palestine Refugees in the Near East drew the attention of the Secretary-General to his annual reports to the General Assembly, which have regularly included information on the issue of demolition and sealing by the Israeli authorities of homes and camp shelters of Palestinian inhabitants of the occupied territory of the West Bank and Gaza Strip.

120. According to the Commissioner-General's report for the period 1 July 1991 to 30 June 1992 (A/47/13) the demolition for punitive reasons of houses and camp shelters has continued in those areas. In the same report UNRWA protested against those actions as being contrary to articles 33 and 53 of the Fourth Geneva Convention. According to a communication from the UNRWA Commissioner-General dated 30 August 1993, during the period 1 July 1992 to 30 June 1993, there were no demolitions within refugee camps in the West Bank, but the Israeli authorities sealed 9 shelters consisting of 32 rooms, affecting 9 families totalling 64 persons. In addition, 130 dwellings in the Gaza Strip and 3 in the West Bank were completely or partially destroyed by the unopposed use of rockets and explosive charges by the Israeli military or security forces. That affected 176 families in Gaza and 3 in the West Bank, totalling approximately 3,000 persons.

121. Of utmost concern is the fact that eviction policies are frequently premeditated well-planned actions, often supported by legislation. This, in turn, implies that the practice of forced evictions is preventable. For example, the independent review of the World Bank's project concerning one of Asia's largest ongoing hydro-dam projects determined that the ambitious scheme was being undertaken "in almost total ignorance of the people and the impact". 35/ Yet it would not be too late in this case for planners to guarantee socially and economically viable development by identifying the priorities and needs of the people affected by the project.

122. In connection with large-scale development projects, 36/ the World Bank has recognized the need for effective regulations for compensation of the communities concerned and Bank policies on "involuntary resettlement" have evolved progressively over the past decade. In February 1980, an operational manual statement on "Social issues associated with involuntary resettlement in Bank-financed projects" recognized the hardship caused to the target groups unless appropriate preventive action is taken. The Bank's general policy in relation to relocation of people due to development projects, as stated in Operational Manual Statement No. 2.33 of February 1980, was identified as the following:

> "[the] Bank's general policy is to help the borrower to ensure that after a reasonable transition period, the displaced people regain at least their previous standard of living and that so far as possible, they be economically and socially integrated into the host communities. Planning and financing the resettlement should be an integral part of the project ...".

123. In June 1990, the World Bank, in its Operational Directive 4.30 of June 1990 on "Involuntary resettlement", reaffirmed that "involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out". In addition, as mentioned above, the World Bank has established a Social Policy and Resettlement Division to review internally the Bank's policy relating to involuntary resettlement.

IX. NATIONAL EXPERIENCES

124. In this section, the replies received by the Secretary-General from Governments are discussed, highlighting the differing interpretations of Commission on Human Rights resolution 1993/77 and, consequently, the diverging national experiences associated with this practice.

125. The contents of resolution 1993/77 are, generally speaking, considered to be "in line with the spirit of Bolivia's social policy". According to the Government, however, forced evictions in Bolivia generally take place on account of the problems caused by the housing shortages which have arisen as a result of the growth of the urban population. At present, the Government alleges that the practice of forced evictions is non-existent in Bolivia since in all cases of this kind due legal process is necessary. As regards the conferring of legal security of tenure and the adoption of adequate measures for the protection of all persons threatened with forced eviction, one of the objectives of the housing sector is decent housing, comprising not only dwellings but also basic infrastructure and a healthy environment. The Government of Bolivia, with regard to the recommendation that all Governments should provide immediate restitution, compensation or alternative accommodation or land, considers "that first of all a study should be undertaken of the relevant legislation in each State and of the possibilities it offers".

126. The communication received from the Government of Colombia also refers primarily "to the serious housing shortage that exists in Colombia":

> "Inadequacies of housing in both quantitative and qualitative terms and the poor housing conditions of workers resulting from a sudden influx of the rural population into the larger towns on account of development in the field of public order (insecurity, guerrilla warfare, operations of paramilitary forces, drug traffic, natural disasters, etc.) have all contributed to the flight of populations concerned to the metropolitan areas, where they have little opportunity to integrate or to find a place in the urban employment market. The rate of this inflow has been such as to give rise to shortages of decent housing for persons displaced from rural areas."

127. The reply cites the right of every citizen to decent housing as a fundamental principle given constitutional status with the adoption of the 1991 Constitution, article 51, which reads as follows:

> "All Colombian citizens have the right to decent housing. The State shall establish the conditions necessary to make that right effective and shall promote social housing plans, adequate long-term financial machinery and associative structures for the implementation of such housing programmes."

128. Consequently, the Government has set as a target the construction of 539,000 housing units during the four-year period 1990-1994, intended primarily for the use of persons with incomes of less than four times the statutory minimum monthly wage. As a part of the implementation policy, a family housing subsidy scheme has been set up. The reply describes in

great detail the constitutional provisions of the right to private ownership, as well as social housing policies and urban development in Colombia - information which the Secretary-General considers of importance for the Special Rapporteur on the right to adequate housing.

129. Specifically in relation to the practice of forced evictions, the Colombian contribution, very much in line with the Bolivian reply, states that "forced eviction has not been practised in Colombia for a number of years - not since the time when programmes for the clearing of ares of substandard housing were being implemented under the authority of the former Territorial Credit Institute". It is worth noting, however, that Act 9A of 1989, governing the standard procedures for the acquisition of real property, lays an obligation on mayors of towns and cities to establish and keep up to date inventories of "high-risk areas", i.e. settlements located in areas where there is a danger of flooding, landslides or subsidence or where the environment is unhealthy, or on land in respect of which no building permit has been granted.

130. The Government of Chad, in its reply, interprets the term "forced evictions" rather differently and argues that although the practice of forced evictions is in clear violation of the Universal Declaration of Human Rights, forced evictions of aliens from the national territory may be ordered in case of a threat to national security or to the fulfilment of economic, social, cultural and political rights.

131. The reply received from the Government of Italy concentrates essentially on its understanding of the practice of "forced evictions" as defined in resolution 1993/77 which "without doubt, does not refer to the expulsion of foreigners from national territory (under article 13 of the International Covenant on Civil and Political Rights), nor to the evacuation of buildings and sites illegally occupied, for reasons of public order". It is, therefore, concluded that the relevant resolution refers to cases implying the involuntary expulsion or evacuation of mass populations, without undertaking any appropriate measures or foreseeing any indemnities. In the light of this interpretation, "it is unimaginable that such cases could occur in Italy, as this practice constitutes a violation of the solemn principles enshrined in our Constitution and characterizing a civil and democratic society".

132. A different interpretation of the resolution was made by Niger. The Ministry for Foreign Affairs and Cooperation of the Republic of Niger informed the Secretary-General in its reply that in its opinion, with reference to paragraph 1 of resolution 1993/77, the practice of forced evictions "cannot, ipso facto, constitute a gross violation of human rights, and neither, in particular, of the right to adequate housing". It was further pointed out that Niger does not establish a correlation between the practice of forced evictions and proper conditions of housing. In most of the cases evicted persons refuse to comply with the law of the host country, and are liable to disturb the public order. Paragraph 1 of the resolution is seen to be of particular interest "to the great Western civilizations who are, at the end of this century, confronted with housing crises and very important migration fluxes".

133. With regard to paragraph 2 of the resolution, the Government stated that in Niger, largely due to its geographical location in the heart of Africa and given the current problems of drug trafficking and counterfeiting, the control of foreigners in irregular situations represents a permanent worry for the authorities. Niger therefore considers the undertaking of measures to eliminate the practice of forced evictions, as urged in resolution 1993/77, very difficult.

134. In its reply the Government of Turkey stated that practices relating to forced evictions, as defined in resolution 1993/77 do not exist in Turkey. The Ministry of Construction and the Ministry of the State are, however, in the process of pursuing projects relating to the construction of housing in order to accommodate persons expelled from neighbouring countries. This information addresses an issue raised by the Office of the United Nations High Commissioner for Refugees concerning the relationship between forced evictions and refugee flows.

135. One NGO in consultative status with the Economic and Social Council referred to the practice of forced evictions as contributing to the fact that there are over 200,000 internally displaced persons in Tajikistan and approximately 100,000 refuges from Tajikistan in Afghanistan. Another NGO alleged that the construction of housing and work units on good arable land by local authorities is causing a dramatic surge in the number of refugees arriving in Nepal from neighbouring countries (three times higher in the first half of 1993 than in the 1990-1992 period, according to UNHCR).

136. In its contribution the Government of Ukraine referred to article 109 of the Ukrainian Housing Code, in conformity with which "citizens may be evicted from living accommodation in public or social housing only on the grounds specified in the Ukrainian Housing Code and only by legal process. Only people who are in unauthorized occupation of accommodation or are living in dwellings in danger of collapse may be evicted under an administrative procedure, with the approval of the public prosecutor". The decision to evict which, according to the authorities, is still frequently made, is then carried out by the bailiff of the people's court.

137. The following figures illustrate the practice of forced evictions in Ukraine: in 1992, 1,789 evictions from accommodation occupied without authorization were carried out with the approval of the public prosecutor; in the first half of 1993, 794 such cases were registered. At the same time, approval of eviction from accommodation occupied without authorization was refused in 1,401 cases in 1992 and in 694 cases during the first half of 1993. In addition, 22 approvals in 1992 and 3 in the first six months of 1993 were given to evict citizens living in dwellings considered to be in danger of collapse.

138. The authorities specified that "the decisions taken by the prosecutors on administrative eviction are generally correct". The prosecutor-general's office has recently requested information from the regions on these matters in

order to standardize the practice and undertake a legislative initiative so that all housing disputes would be decided only in court, where the interests of all concerned would be fully taken into account.

139. In conclusion, it needs to be reiterated that, in view of the different interpretations of the practice of forced evictions adopted by several Governments, for the purposes of this report the term forced evictions refers to "the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions", and is distinct from population transfers, expulsions of aliens from national territory and the phenomenon of internally displaced persons.

X. CONCLUSIONS

140. Whether a gross violation of human rights, in particular of the right to adequate housing, or in the context of displacements, resettlements, population transfers or removals, the practice of forced evictions continues to exist throughout the world. However, not only does the practice of forced evictions continue to persist worldwide, but, as stated in Commission resolution 1993/77, it is actually increasing in terms of the number of people affected as well as in the severity of its impact.

141. While the practice of forced evictions may take various forms and affect individual households, as well as whole communities, there exist certain common characteristics associated with it: the victims of forced evictions are almost always the poorest, socially most disadvantaged sectors of society and a certain degree of violence is involved.

142. From this analysis it can be observed that in most cases evictions can be prevented and in all cases the adverse consequences can be avoided. In cases where evictions are unavoidable, there exists an obligation on the part of the proponents of evictions to undertake measures to compensate the victims, so as to reduce the adverse consequences to a minimum.

143. It has further been shown that the practice of forced evictions is increasing globally, despite the attention paid to the phenomenon by international human rights bodies and organs. The fact that the practice of forced evictions constitutes an act which violates the right to adequate housing, and other human rights by implication, leads to the conclusion that there exists a substantial gap between legal norms and practice. The involuntary removal of persons, families and groups from their homes is a current practice in many countries which, in most cases, is contradictory to, if not a blatant infringement of, fundamental, internationally recognized human rights law.

144. Such circumstances disclose a compelling need to create new legislation and effective mechanisms geared to the prevention of forced evictions at national, regional and international levels, with a view to enforcing the implementation mechanisms of the right to adequate housing.

145. Furthermore, there exists a clear and inherent relationship between housing rights and evictions; by implication, a wide variety of civil, political, economic, social and cultural rights are also closely linked to the practice. In addition, the fact that international human rights bodies, in particular the Committee on Economic, Social and Cultural Rights, have addressed the question of forced evictions squarely in the context of the human rights implications of the practice has resulted in an increased acceptance that the consequences of the practice are serious and that it is appropriate to apply the norms of international human rights law.

146. It is without doubt necessary that the issue of forced evictions be considered in greater detail in the future deliberations of all United Nations human rights bodies. Furthermore, in an attempt to rationalize and streamline the work of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, it is proposed that the Special Rapporteurs on the right to adequate housing, population transfers, internally displaced persons and the environment study with particular care in their next reports the relationship between their respective mandates and the practice of forced evictions.

XI. RECOMMENDATIONS

147. On the basis of the facts and analyses of the present report, the Secretary-General wishes to make the following recommendations to the Commission on Human Rights at its fiftieth session. The first part of the recommendations will address methods for the prevention and elimination of forced evictions, whereas the second part will elaborate methods for the mitigation of the adverse consequences of forced evictions when these cannot be prevented.

A. Preventive measures

148. States parties to the International Covenant on Economic, Social and Cultural Rights have agreed to take appropriate steps to ensure the realization of the rights contained in the Covenant by all appropriate means, including in particular the adoption of legislative measures.

149. In the case of forced evictions, many national housing acts, laws or statutes already contain clauses expressly prohibiting illegal evictions. The 1977 Protection from Eviction Act of the United Kingdom includes legal protection from "illegal eviction and harassment" and the creation of offences for violations of the Act. The existence of such legal provisions indicates that it would be reasonable for countries lacking such provisions to consider adopting them. In fact, areas of national law in need of revision or repeal may be revealed by the legislative review function of the State reporting procedure.

150. Eviction impact statements may also contribute to the protection of the potential victims, the reduction of social tension and the mitigation of the inhabitants' hardship, as long as they are viewed only as interim measures and not as substitutes for legislative authority which, if improperly carried out, may even justify an eviction process. Under such a procedure, permission to remove occupants from any given site will not be granted unless such statements, prepared by persons or organs fully independent of the actor requesting the eviction are provided to the competent authorities, and if the statements do not reveal that the target community is inadequately protected.

151. One of the most urgent measures to be taken by Governments in eliminating the practice of forced evictions is the enforcement of housing rights. This study has argued that economic and developmental considerations are among the main motivations behind forced evictions. The incentives of economic growth and development for society often overshadow the basic need of individuals for a decent and secure place to live. The right to property is in constant conflict with the right to housing. Therefore, enforcing the right to housing implies a step-by-step approach leading only gradually to the full, society-wide enjoyment of the right.

152. It is, therefore, recommended that the steps to be taken towards the full enjoyment of the right to adequate housing include, inter alia, the undertaking of comprehensive and systematic legislative reviews of all national laws relevant to or affecting the right to housing to ensure their conformity with international standards, to initiate nationwide public information campaigns on the various provisions on the issue of housing, as

well as the regular inclusion in State's reports, to the Committee on Economic, Social and Cultural Rights of data relevant to evictions, resettlement and homelessness.

153. One specific legally based action Governments should undertake to curtail the practice of forced evictions is the universal conferral of security of tenure. Security of tenure, namely the legal right to protection from arbitrary or forced eviction - equally relevant to owners, tenants and squatters - may play a significant role in discouraging the eviction process.

154. The principle of security of tenure has been repeatedly recognized. In resolution 1993/77 the Commission on Human Rights urged all Governments to "confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups".

155. General Comment No. 4 (1991) on the right to adequate housing, unanimously adopted by the Committee on Economic, Social and Cultural Rights clearly places security of tenure into the category of legal entitlements assumed under the International Covenant on Economic, Social and Cultural Rights. The Committee, in defining the meaning of "adequate housing", expressly stated that:

> "Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups" (para. 8 (a)).

156. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1991/12, recommended that the Commission on Human Rights encourage Governments "to undertake policy and legislative measures aimed at curtailing the practice of forced eviction, including the conferral of legal security of tenure to those currently threatened with forced eviction, based upon effective consultation and negotiation with affected persons or groups".

157. The Commission on Human Settlements, in its resolution 14/6 of 5 May 1993, unanimously urged States to establish appropriate monitoring mechanisms and indicators on the extent of homelessness, inadequate housing conditions and persons without security of tenure, as well as other issues arising from the right to adequate housing.

158. Read in conjunction with each other and considering all other foundations of housing rights in international law, security of tenure for everyone, notwithstanding the type of housing, has become increasingly entrenched in the legal interpretation of the right to adequate housing.

159. The United Nations Centre for Human Settlements (Habitat) is strongly against the eradication of urban slums and squatter settlements and against the forced eviction of families in cases of competing land-use interests. Habitat reports that with the adoption of national shelter strategies by most countries, including regularization and upgrading policies, some progress is being made in securing respect for peoples' efforts to house themselves where the State or the private sector is unable to offer acceptable and adequate housing.

160. In such cases, Governments are often not required to do more than refrain from forced evictions in order to respect the right to adequate housing, as long as a commitment to provide support to the self-help housing efforts of the poor exist - through technical, legal and financial assistance. In this situation, one of the most far-reaching measures is the provision of security of tenure. According to Habitat, legal protection in the form of granting an occupancy permit or title to a piece of land destined for residential use is the single most important step Governments can take in honouring their commitment to the right to adequate housing, and to the eradication of the practice of forced evictions. These steps in turn often trigger an impressive level of investment in self-help housing, especially among the poor in developing countries.

161. Nevertheless, security of tenure alone, without adequate safeguards for affordability and an acceptable level of habitability, would not fully satisfy the legal requirements inherent in housing rights.

162. In a situation of conflicting interests between the landowner and persons who have illegally occupied housing or land sites, land-sharing, a proposal advocated by Habitat and COHRE, is a development option which can provide a mutually satisfactory solution to the dispute. This preventive method of avoiding forced evictions has been successfully applied in Hyderabad, India, and Bangkok, Thailand. In many cities in developing countries, the legal system limits the possibilities for immediate removal of the squatters and therefore forces the landlord to pursue complicated and time-consuming legal procedures; land-sharing offers landlords the benefit of immediate repossession and development of the land, a likely increase in land value and the elimination of legal or other fees involved in the act of eviction.

163. The principle of land-sharing is the development of the site under dispute in such a way that one part of the site is reserved for housing the people who lived there while allowing the owner to develop the other part according to his/her own wishes. Land-sharing can be considered a form of on-site relocation. For the potential victims of forced evictions, this alternative offers security of tenure, the elimination of eviction threats and litigation, incentives to build safer and healthier housing of permanent building materials, as well as an asset for future generations. In addition, public agencies have the advantage of avoiding social unrest, the provision of public services is facilitated and the incentives for pursuing upgrading programmes are greater when occupants possess security of tenure.

164. The "buy-out" option is a unique alternative to forced evictions and has been carried out with varied, small-scale success in some countries, although

the global applicability of this solution might be limited. The "buy-out" option concerns essentially properties, inhabited by squatters which have been occupied for a long period of time but which require renovation.

165. This option recognizes both the responsibility of public authorities to ensure a habitable housing situation, as well as the rights of dwellers to tenure. Since many occupied dwellings are owned by private persons, the buy-out option involves the purchase by local councils of the dwelling in question, with the subsequent right and duty of the council to renovate the building.

166. The squatter inhabitants are involved in the process throughout, are offered either financial assistance or alternative housing during the renovation phase, and are permitted to re-inhabit the renovated building following completion of the project. The squatters then become tenants, generally at a reasonable rent, and have both the benefits of returning to their dwelling and a substantially improved and maintained home. This option precludes eviction, protects the rights of the inhabitants and increases habitable living space.

167. Additional preventive methods could include, inter alia, the following: 37/:

(a) The creation of social awareness and participation in the planning and implementation of mitigation, as well as preparedness and preventive, measures to reduce losses resulting from planned evictions;

(b) Contributing to poverty alleviation measures and better living conditions for the poor by protecting private and social assets, promoting private and social medium- and long-term investment and providing employment opportunities and skills;

(c) Strengthening community development to carry out shared responsibilities for the rehabilitation and reconstruction, protection and increase of social and public services and infrastructure - with the people themselves assessing and ordering their needs, planning and carrying out remedies and being responsible for maintenance.

168. In recognition of the severe human traumas associated with forced evictions, relocation guidelines have been developed, notably by the World Bank and the OECD, as referred to above. Habitat has also taken clearly positive initiatives in this direction, participating in the elaboration of guidelines of good practice which should be promoted at a policy level, guidelines for the management of relocation processes and guidelines for the different planning and implementation steps of relocation procedures.

169. Such guidelines may assist policy makers of donor countries in deciding against funding a project involving evictions, but will have only limited impact upon Governments in recipient countries which continue the practice. Where outside agencies, such as donors and/or bilateral organizations, are able to exert influence through project guidelines, as in the case of the World Bank, such guidelines may indeed play a positive role. However, it is imperative to develop guidelines which can have an impact on development

situations where special leverage is not available or outside agencies are not involved. In this context, the guidelines elaborated by Habitat contain the following elements: avoidance of relocation if at all possible; if relocation is unavoidable, sufficient resources, including the assistance of NGOs and community-based organizations, must be allocated to ensure that the urban poor do not suffer from the process; the parties benefiting from the development causing the relocation should pay the full costs of the relocation process including the socio-economic rehabilitation of relocatees.

170. Nevertheless, it is vital to understand that such guidelines might also constitute a tacit acceptance of the practice of forced evictions, although this report advocates as its main recommendation that **forced evictions must be avoided if at all possible and only carried out if absolutely necessary**. Guidelines for relocation are important, however, and, if pursued realistically and faithfully by all the actors involved, can assist in finding alternatives to the eviction process and the consequent violations of the right to adequate housing.

171. This report argues that evictions often occur in connection with major international events, such as Olympic Games, beauty pageants, official State visits, international conferences, etc., which, on the one hand, have positive implications for the host country such as media attention and higher revenues but, on the other hand, should not be seen as reasonable justifications for the practice of forced evictions.

172. There thus seems to be an arguable need for the drafting and adoption of guidelines for the planning of international events, which could be initiated by such United Nations bodies as the Commission on Human Rights and the Commission on Human Settlements. Elements to be considered in the drafting of such guidelines include: the discouraging of external donors if evictions are likely to result from the planned event; public hearings conducted prior to the decision to adopt the plan in order to address the likelihood of evictions in connection with the event; persons threatened with forced evictions shall have the right to bring the matter before a court of law and the right to appeal before a higher court; if no alternatives to evictions exist, minimum periods of warning, possibilities of relocation and adequate financial compensation and participation in the process must be guaranteed.

173. It should also be noted that the Special Rapporteur on the right to adequate housing has been requested by the Sub-Commission to examine the feasibility of an international convention on housing rights which would provide an opportunity for an in-depth debate on the issue of housing rights at international level.

174. The role of non-governmental organizations in the prevention and elimination of the practice of forced evictions is one of great importance and should be promoted to the full. Their involvement as intermediaries between policy makers and affected persons for the mutual benefit of all actors involved and especially to defend the interests of the victims must be stressed. Well-informed non-governmental organizations may help to obtain political support and to alert public opinion to deter planned forced evictions, they may coordinate and assist in the resettlement, as their role

is often crucial in the relocation process. In addition, people often do not know what their rights and options are in situations of looming forced evictions, and NGOs can give legal and professional assistance.

175. A practical example of influential work carried out by NGOs in the field of housing rights and forced evictions are the activities of Habitat International Coalition (HIC), a Mexican-based organization, as well as the Netherlands NGO, COHRE which have also contributed substantively to the present report. The latter has published a manual on forced evictions and human rights, 38/ which contains the relevant United Nations resolutions on forced eviction in all the official United Nations languages and practical suggestions as to their use at the national level. This example of grass-roots-level activity will doubtless contribute to the elimination of the practice of forced evictions by raising awareness amongst the affected communities.

176. One aspect of international population movements, or international migration across boundaries, should be the study of its causes and how development affects international migration; 39/ with particular reference to forced evictions, the study should address how forced evictions as a "by-product" of development affect the number of "economic migrants", (as opposed to political refugees). UNDP, in its contribution to the present report, noted that "UNDP recognizes that international population movements can affect and be affected by virtually all aspects of the development process", in relation to which a comprehensive strategy entails taking into account both causes and impacts of population movements. Furthermore, UNDP is firmly committed to preventing conditions resulting in forced migrations, such as the elimination of "broad contextual conditions (e.g. the availability of housing". 40/

B. Compensatory measures

177. In this context, resolution 1993/77, states that: "all Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups".

178. In addition, the Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. Theo van Boven, recognizes in his final report that "the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities". (E/CN.4/Sub.2/1993/8, para. 21).

179. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991), deemed legal procedures seeking compensation following an illegal eviction one of the possible remedies in connection with the right to adequate housing:

"The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions." (E/1992/23-E/C.12/1991/4, annex III, para. 17).

180. Compensation and restitution may take various forms. Cash payments represent the most frequent form of compensation, although experience shows that the money offered is usually insufficient and it its argued that this type of indemnity by itself is an inadequate form of countering the problems involved with forced evictions.

181. Alternative accommodation at relocation sites is one of the most feasible ways to reduce the adverse effects of evictions. However, overcrowding, long distances from employment opportunities and previous neighbours, lack of basic amenities and a general decline in living conditions are too frequently characteristics of this alternative. At the other extreme, the costs of the alternative housing offered may far exceed the means of the evicted persons. Furthermore, in many cases the victims are offered no compensation whatsoever. Therefore, the situation with regard to the consequences resulting from the practice of forced evictions is clearly unsatisfactory and point to the urgent need to avoid and eliminate the practice in the first instance, rather than trying to "soften the blow" afterwards.

182. A study published by Habitat suggests the following essential areas of compensation: financial arrangements to cover investments made in the house/land left behind; compensation for the problems caused by being resettled in a place away from the original living environment, such as transport subsidies; compensation for the loss of income due to eviction. 41/

183. In this connection, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34, provides a variety of compensatory principles which could be applied to the victims of forced evictions. These are, inter alia:

(a) Victims are entitled to the mechanisms of justice and to prompt redress;

(b) Victims should be informed of their rights in seeking redress through such mechanisms;

(c) Offenders or third parties responsible for their behaviour should make fair restitution to victims, their families or dependants, including the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights;

(d) When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation;

(e) Victims should receive the necessary material, medical, psychological and social assistance and support.

184. It is evident that these provisions are applied in very few circumstances, not least because the persons affected by the practice of forced eviction are not always perceived as victims, but by squatting or using services illegally, as violators of the law.

185. Finally, as a result of the analysis of the practice of forced evictions and the observations contained in this report, the Commission on Human Rights might wish to consider the establishment of a more permanent mechanism, such as a special rapporteur on the practice of forced evictions, with a view to redressing the adverse consequences of forced evictions carried out in the past and preventing forced evictions from happening in the future.

Notes

1/ Official Records of the General Assembly, Forty-third session, Supplement No. 8, Addendum 1, (A/43/8/Add.1).

2/ Habitat International Coalition, "A Global Survey of Forced Evictions: Violations of Human Rights" (June 1993, February 1992, August 1991, August 1990), Utrecht.

3/ Denis Murphy, "A Decent Place to Live: Urban Poor in Asia", Bangkok, Asian Coalition for Housing Rights, 1990.

4/ The Commission on Human Rights has repeatedly devoted its attention to issues relevant to forced evictions. Inter alia, in 1993, the Commission, in accordance with its resolution 1993/60 on "The situation of human rights in the Sudan", noted with deep concern reports of grave violations of human rights in the Sudan, particularly forced displacement of persons. Alarmed by the mass exodus of refugees into neighbouring countries and the large number of internally displaced and victims of minorities who had been forcibly displaced in violation of their human rights, the Commission expressed its concern at the serious human rights violations in the Sudan, including forced displacement of persons, and called upon all parties to the conflict to protect all civilians from violations of human rights, including forcible displacement.

With regard to the human rights situation in Zaire, the Commission on Human Rights, in its resolution 1993/61, showed concern about the seriousness of the situation of human rights in Zaire and, in particular, forced population displacements; the Commission also expressed its concern about the

deterioration of the situation in Shaba province, where the authorities bore the primary responsibility for outbreaks of ethnic tensions and for the forced displacement of 20,000 persons.

5/ The report of the Representative of the Secretary-General on the human rights issues related to internally displaced persons (E/CN.4/1993/35, annex) reflected the diverging comments and views received from Governments, United Nations bodies and non-governmental organizations with regard to the definition of the issue as proposed in the first report. It was, however, suggested to use that definition as a "working definition" until an alternative would be agreed upon.

6/ Palestine Human Rights Information Centre, "The Demolition of Palestinian Homes and Other Structures by Israeli Authorities", 1989, p. 1 (part of the information transmitted by the United Nations Division for Palestinian Rights).

7/ Article 14 (2) (h) of the Convention on the Elimination of All Forms of Discrimination Against Women (1979) obliges States parties to "take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they ... enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications".

8/ Paul Sieghart, "The International Law of Human Rights", Oxford, Clarendon Press, 1993, p. 443.

9/ For an extensive analysis of the impact of structural adjustment on the realization of economic, social and cultural rights, see the second progress report prepared by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1991/17).

10/ The World Bank has established a Resettlement Review Task Force to undertake an internal review concerning policy/practice relating to the involuntary resettlement of persons in connection with World Bank projects. The new Social Policy and Resettlement Division within the Bank Environment Department has as its aims to promote environmentally and socially sound development by creating capacity in the regions and to take social and cultural factors into account in project and programme development.

11/ Asian Coalition for Housing Rights, "Evictions in Seoul, South Korea", Environment and Urbanization, 1989, vol. 1, No. 1, pp. 89-94.

12/ United Nations Centre for Human Settlements (Habitat), "Evaluation of Relocation Experience", Nairobi, 1991. The study establishes useful definitions to distinguish terms often used interchangeably and which are prone to cause confusion. "Relocation": removal to another location with provision of land or housing, equals "resettlement", voluntary or involuntary; **"eviction"**: forced removal without providing alternative land or housing (p. 2).

13/ Ibid, p. i.

14/ Scott Leckie, "When push comes to shove: forced eviction's no eviction", Whole Earth Review, Fall 1991.

15/ Habitat International Coalition, "Forced Evictions: Violations of Human Rights", Utrecht, August 1992.

16/ Ibid, p. 12.

17/ Asian Coalition for Housing Rights, op. cit.

18/ Habitat International Coalition, op. cit., p. 11.

19/ Prangtip Daorueng, "Thai villagers: we shall not be moved", Panoscope, No. 36, July 1993, p. 17.

20/ The Israeli Information Center for Human Rights in the Occupied Territories, "Violations of Human Rights in the Occupied Territories", 1990/1991, p. 31.

21/ Ibid, p. 34.

22/ Hardoy, Jorge and Satterwaithe, "Squatter Citizen: Life in the Urban Third World", Earthscan Publications Ltd., London, 1989.

23/ Leckie, op. cit.

24/ Habitat, op. cit., p. 28.

25/ S.A. Hasnath, "Consequences of squatter removal", Ekistics, No. 263, Oct. 1977, pp. 198-201.

26/ Vijay Paranjpye, "Dam economies: the big lie", Panoscope, July 1993, p. 13.

27/ Development Assistance Committee, "Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects" (OCDE/GD(91)201), Organisation for Economic Cooperation and Development, Paris, 1991, p. 5.

28/ Roger Plant, "Loopholes weaken indigenous rights", Panoscope, July 1993, p. 19.

29/ Concluding Observation of the Committee on Economic, Social and Cultural Rights Concerning the Dominican Republic: "The information that had reached members of the Committee concerning the massive expulsions of nearly 15,000 families in the course of the last five years, the deplorable conditions in which the families had to live, and the conditions in which the expulsions had taken place were deemed sufficiently serious for it to be

considered that the guarantees in article 11 of the Covenant had not been respected" (E/1991/23-E/C.12/1990/8, para. 249).

Concluding Observation of the Committee on Economic, Social and Cultural Rights Concerning Panama: "... The Committee was of the view that evictions carried out in this way not only infringed upon the right to adequate housing but also on the inhabitants' right to privacy and security of the home" (E/1992/23-E/C.12/1991/4, para. 135 (c)).

30/ European Commission of Human Rights cases 6780/74 and 6950/75, Cyprus v. Turkey, 4 European Human Rights Reports 482, Report of the Commission, paras. 208-210, 1982, and Opinion of the Commission, 10 July 1976.

31/ The Sunday News, Zimbabwe, 31 October 1993; The Daily Gazette, Zimbabwe, 1 and 2 November 1993.

32/ Centre on Housing Rights and Evictions and Habitant International Coalition, "Forced Evictions: Violations of Human Rights", Utrecht, June 1993, p. 9.

33/ Ibid.

34/ Ibid.

35/ Bradford Morse and Thomas Berger, "Sardar Sarovar: The Report of the Independent Review", Ottawa, Resource Futures International, 1992, p. 44.

36/ Large-scale development projects may include the construction or establishment of dams, new towns or ports, housing and urban infrastructure, mines, large industrial plants, railways or highways, irrigation canals and national parks or protected areas.

37/ Outlined in Habitat News, vol. 15, No. 1, April 1993, United Nations Centre for Human Settlements (Habitat), Nairobi, p. 27.

38/ Centre on Housing Rights and Evictions (COHRE), "Forced Evictions and Human Rights: A Manual for Action", Utrecht, Sources 3, June 1993.

39/ With reference to the relationship between development and migration, UNDP has already collaborated with UNFPA, ILO, UNHCR, IMO and others; according to UNDP, the World Bank is another potential collaborator.

40/ "Towards a policy and strategy on international population movements and sustainable human development: issues for UNDP" internal document of the Bureau for Programme Policy and Evaluation, 2 April 1993, p. 20.

41/ Habitat, op. cit. p. 28.